IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 14TH JULY 2006 / 23RD ASHADHA,1928

OP.No. 22769 of 1998(I)

PETITIONER:

M/S. PUNATHIL ROLLER FLOUR MILLS (P) LTD., KOTTALI, KANNUR,
REPRESENTED BY P.P. MOHAMMED, SHAFEEQUE, MANAGING DIRECTOR.

BY ADV. SRI.T.M.SREEDHARAN
SRI.N.UNNIKRISHNAN

RESPONDENTS:
----

1. **THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, KANNUR.**

2. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,**
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER (SHRI GEORGEKUTTY MATHEW)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/07/2006 ALONG WITH TRC NOS.10 & 13/02, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.40143/98 IN OP NO. 22769/98 I

DISMISSED

14.7.2006 **SD/- C. N. RAMACHANDRAN NAIR, JUDGE**

SD/- K. M. JOSEPH, JUDGE

APPENDIX IN O.P. NO. 22769/98 I

PETITIONER'S EXHIBITS:

EXT.P1 **TRUE COPY OF NOTIFICATION S.R.O. NO.968/80 DT. 21.10.1980.**

EXT.P2 **TRUE COPY OF NOTIFICATION SRO NO.499/90 DT. 31.3.1990.**

EXT.P3 **TRUE COPY OF ORDER NO. C. 9/8924/93 DATED 8.3.1994.**

EXT.P4 **TRUE COPY OF ORDER NO.C2/4497/98 DATED 13.10.1998.**

RESPONDENTS' EXHIBITS:

ANNEXURE I **TRUE COPY OF LETTER NO.35142289/93-94 DATED 27.3.1998.**

// TRUE COPY//

PS TO JUDGE

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

OP NO.22769/98 I, TRC 10/02 & 13/02

Dated this the 14th day of July, 2006

JUDGMENT

C.N. Ramachandran Nair, J.

Since the issue involved in all these cases is the same, the Original Petition and the connected TRCs are heard together and disposed of by this common judgment. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondent, State of Kerala.

2. Petitioner is a Flour Mill which was granted sales tax exemption from 1.7.1989 to 30.6.1994. The Board of Revenue by order dated 5.8.1994 clarified that wheat and wheat products will be treated as one commodity for the financial years 1990 - 1994. But, thereafter, since wheat products have again been brought under the first schedule treating those as commercially different from wheat, the Industries Department issued Ext.P4 withdrawal of sales tax exemption granted to the petitioner from

1.4.1993 to 31.3.1994. It is this order that is under challenge in the Original Petition.

3. Learned counsel appearing for the petitioner contended that the clarification was issued by the Board of Revenue after the close of the financial year i.e. on 5.8.1994 and the order withdrawing sales tax exemption was issued still later, on 13.10.1998. In between, however, during the relevant years i.e. 1990 - 1994, the petitioner did not collect any tax as it was enjoying sales tax exemption on the sale of it's products. Therefore, according to him, Ext.P4 which has retrospective effect of sales tax liability, is illegal and arbitrary and unauthorised. Even though the Government has authority to withdraw sales tax exemption in exercise of it's powers under Section 10(3) of the KGST Act, it has to be necessarily exercised in a fair and reasonable manner. An arbitrary withdrawal of sales tax exemption retrospectively will certainly result in loss to the petitioner in as much as the petitioner could not collect the tax based on certificate of exemption issued to the

petitioner, it is contended. Of course, in this particular case, the withdrawal of exemption has no consequence because wheat products do not attract tax, if the wheat was purchased within the State. However, petitioner has a case that substantial quantity of wheat was purchased from outside State and consequent upon the withdrawal of sales tax exemption, petitioner has to remit the tax, in spite of exemption earlier granted. In fact, the orders of the tribunal under challenge are consequential orders demanding tax based on Ext.P4. Since Ext.P4 is issued several years after the relevant year and since the petitioner has not collected tax on the sale of its products, except sales of PDS for which, tax stands forfeited, we are constrained to hold that Ext.P4 is arbitrary and unauthorised. In the circumstances, Ext.P4 is vacated with a direction to the respondent to permit the petitioner to enjoy sales tax exemption on wheat products from 1.4.1993 to 31.3.1994 in terms of the Certificate of Exemption originally issued. However, if any tax was collected by the petitioner, the respondent can recover the

same with interest. The TRCs are also allowed directing the Officer to modify the assessments based on this Judgment in the connected writ petition. So far as, the petitioner's challenge against interest demanded under Section 23(3) of the KGST Act, we find that the petitioner has not remitted the collected tax and consequently there is default and the petitioner is liable to pay interest. We, therefore, reject this dispute raised in the connected TRC.

C.N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

OP 22769/98I &
TRC NOS.10/02 & 13/02

JUDGMENT

14th July, 2006.